

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Pacific Bell Petition for)
Rulemaking to Amend Section 69.106)
of the Commission's Rules)

COMMENTS OF TRANSACTION NETWORK SERVICES, INC.

Transaction Network Services, Inc. ("TNS") hereby submits its comments on the Petition for Rulemaking filed by Pacific Bell in which the carrier seeks to initiate a proceeding to amend Part 69 of the Commission's Rules to permit the establishment of a call setup charge.¹

Pacific Bell argues that changes in the types and patterns of network usage warrant amendment of the rules to permit increases in the rates charged for short duration calls. As a provider of transmission and other services for transactional applications such as credit card verifications, TNS could be subjected to substantial and unjustifiable increases in the costs of the telecommunications services it acquires from Pacific Bell and other local exchange carriers were the access charge rules to be modified as proposed. For the reasons set out below, TNS urges the Commission not to institute the requested rulemaking or, as a minimum, to defer any such decision pending the submission of further

¹ See Petition for Rulemaking filed June 30, 1994 ("Petition"); 47 C.F.R. Part 69.

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supporting information by Pacific Bell and an evaluation of the broader implications of such a change in the context of the agency's overall examination of its access charge rules.

Currently, TNS acquires "950" (also known as Feature Group B) access services from various local exchange carriers to collect transactional data from point-of-sale locations. The "950" transmissions are routed over dedicated facilities to the host processors of TNS' clients, where validation activities are performed. These transmissions typically are completed in 10-20 seconds, which places them at risk of substantial rate increases under Pacific Bell's proposal. Although, as discussed in further detail below, it is difficult to provide a thorough analysis of Pacific Bell's proposal because of the paucity of supporting information it has submitted, TNS would like to offer the following comments.

**I. PACIFIC BELL HAS FAILED TO CARRY
ITS BURDEN OF SHOWING THAT A
RULEMAKING SHOULD BE INITIATED**

TNS generally supports the principle of cost causative pricing because it should lead to the most economically efficient market solutions. However, while Pacific Bell has claimed that its proposed call setup charge will promote cost causative ratemaking, the talismatic invocation of that term is not alone sufficient to make that case. Indeed, the

dearth of information offered by Pacific Bell leaves serious questions as to whether (1) its proposed call setup charge is appropriately based on cost causation in light of modern network technology, and (2) the selective change in the access charge rules sought by Pacific Bell would improve the relationship of the overall access charge rate structure to underlying costs.

For example, Pacific Bell's claim that it is facing a material threat of uneconomic bypass of its local exchange network is wholly unsupported, and there is no showing that the carrier is otherwise at risk of not fully recovering its costs, much less that the proposed change would somehow ameliorate any such potential problems.² Even more importantly, Pacific Bell has not explained the basis for its allocation of the costs of "processing capacity" and "overhead" to calculate the costs of call setup.³ Modern digital switches have such enormous capacity and processing capabilities that some have argued they are effectively now a non-traffic sensitive network cost. It is by no means clear that the change proposed by Pacific Bell will improve the relationship of access charges to underlying network costs under these circumstances.

² See Petition at 8-9.

³ See id. at 6-7.

The lack of greater explanation and supporting data in the Pacific Bell filing is particularly troubling given the prior decisions in which the FCC recognized that a change in the access charge rules of the type proposed by Pacific Bell is a major modification with far reaching implications that should not be undertaken absent a full exploration of its impact.⁴ Although the Commission in those cases invited the filing of a petition for rulemaking, it clearly contemplated that the proponent of the change would at least attempt to provide a complete record upon which to evaluate the petition. Pacific Bell has fallen far short of that requirement here, and any effort to supplement the record at a later date without full opportunity for public comment could not cure this defect. As a result, Pacific Bell has failed to carry its burden of demonstrating that the Commission should initiate its requested rulemaking to amend the access charge rules.

**II. INITIATION OF A CALL SETUP CHARGE
RULEMAKING WOULD BE PREMATURE AT THIS TIME**

For some time now, the FCC and others have been examining the need to revisit the access charge rules as a

⁴ See In the Matter of Bell Atlantic Telephone Companies Petition for Waiver of Sections 69.106 and 69.205, DA 89-1258, 4 FCC Rcd 7210 (1989); In the Matter of U S West Communications, Inc. Petition for Waiver of Part 69, DA 92-765, 7 FCC Rcd 4043 (1992).

whole.⁵ The introduction of new network technologies, the advent of competitive services in at least some niche markets, and the growing potential for more substantial future competition in the local exchange have caused numerous parties to call for comprehensive access charge reform. While these initiatives are pending, it is critically important that the Commission not prejudge elements of that reform or unnecessarily churn the access charge rate structure prior to implementation of its overall plan.

Nowhere in Pacific Bell's petition is there an assessment of the interrelationship of its proposed call setup charge with the other access charge rules, with the introduction of out-of-band signalling such as SS7, or with the inauguration of the 800 database⁶ and other intelligent network-related functionality.⁷ Moreover, there is no discussion of the competitive implications of the proposed rule change with respect to either the effect on alternative providers or the impact on expanded interconnection

⁵ See, e.g., Federal Communications Commission, Federal Perspectives on Access Charge Reform (FCC Common Carrier Bureau Access Reform Task Force 1993).

⁶ See In the Matter of Provision of Access for 800 Service, CC Docket No. 86-10, 8 FCC Rcd 907 (1993).

⁷ See In the Matter of Intelligent Networks, CC Docket No. 91-346, 8 FCC Rcd 6813 (1993).

requirements.⁸ Nor has Pacific Bell explained why it is proposing to unbundle call setup costs and charges, but not the service functionality itself as would have been consistent with the original concept of open network architecture.⁹

It follows that Pacific Bell has failed to demonstrate that the Commission should move forward with its proposed call setup charge before these important related issues can be addressed. As discussed above, Pacific Bell has not shown that there is a need to move precipitously on this matter in order to avoid harmful consequences for it or for the public. In the absence of such a showing, the timing of its petition suggests that the carrier may have other motivations for its petition.

III. PACIFIC BELL'S PROPOSED CALL SETUP CHARGE COULD UNREASONABLY AND ANTICOMPETITIVELY DISRUPT LAWFUL USES OF THE PUBLIC SWITCHED NETWORK

The increased usage of the public switched network for transaction applications cited by Pacific Bell is evidence of the economies and efficiencies available to providers of goods and services from electronic data interchange ("EDI")

⁸ See In the Matter of Expanded Interconnection with Local Telephone Company Facilities; Amendment of the Part 69 Allocation of General Support Facility Costs, CC Docket No. 91-141, 7 FCC Rcd 7369 (1992).

⁹ See California v. FCC, 4 F.3d 1505 (9th Cir. 1993).

and similar techniques. Such services provide important transactional capabilities which foster increased economic growth in all market sectors. Not only do these services facilitate existing transfers, they make possible the creation of new outlets for economic activity.

Because of the value of these services, the Commission should be circumspect in approving changes to its rules that would undermine their continued viability. As the agency is aware, even the inauguration of a proceeding -- such as a rulemaking -- that could lead to such a detrimental impact would have a major chilling effect on the development of the affected services. This alone counsels against initiation of any rulemaking predicated on the sparse record created by Pacific Bell.

But there is another reason to be skeptical of Pacific Bell's proposal. A number of local exchange carriers have indicated an interest in entering the market for transaction processing services. In other situations where local exchange carriers have planned to enter competitive markets that are dependent upon their local exchange services, they have sought to disrupt existing supplier/customer relationships in the targeted market through changes in the underlying rate structures and rate levels, which in turn undermine the cost basis of the network-dependent competitive service offerings. Such strategic behavior has been evi-

denced in the FCC's several ESP access charge proceedings¹⁰ as well as in state proceedings involving Bell Company entry into voice messaging service markets. Given this history, the Commission should, as a minimum, require Pacific Bell to reveal its own business plans regarding transaction services before taking action on its petition.

A further possibility is that Pacific Bell is simply trying to force a migration of transaction processing applications off of its analog public switched network to its reportedly underutilized and overpriced packet data network. Of course, in evaluating any such migration plan, the Commission would need to evaluate the cost to existing providers of such a changeover -- including the swap-out of existing analog point-of-sale terminals and other equipment -- as well as the consequences for other ratepayers should these services abandon the local exchange. Even were a migration to the data network ultimately deemed to be just and reasonable, the costs to existing users would mandate a lengthy transition period.

None of these issues has yet been adequately addressed by Pacific Bell. They are, however, critical to conducting a public interest analysis of the call setup charge proposal. The Commission should not move forward with a rulemaking

¹⁰ See, e.g., In the Matter of Amendments of Part 69 of the Commission's Rules Relating to Enhanced Service Providers, 3 FCC Rcd 2631 (1988).

until it receives satisfactory answers to these critical questions.

CONCLUSION

For the foregoing reasons, TNS urges the Commission to deny Pacific Bell's Petition for Rulemaking.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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